

IN RE DISQUALIFICATION OF THOMAKOS.

THE STATE OF OHIO v. BOLON.

**[Cite as *In re Disqualification of Thomakos*, 156 Ohio St.3d 1265,
2019-Ohio-1727.]**

*Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to
demonstrate bias or prejudice—Disqualification denied.*

(No. 19-AP-026—Decided March 14, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Tuscarawas County Court of Common
Pleas, General and Domestic Relations Division, Case No. 2018 CR 12 0470.

O’CONNOR, C.J.

{¶ 1} Defendant, Marc C. Bolon, has filed an affidavit with the clerk of this court pursuant to R.C. 2701.03 seeking to disqualify Judge Elizabeth Lehigh Thomakos from presiding over any further proceedings in the above-referenced case.

{¶ 2} Mr. Bolon alleges that Judge Thomakos recused herself from a case filed against him in 2014 because a victim in the case was an acquaintance of the judge. Mr. Bolon believes that because of that prior case, the judge remains biased against him, as evidenced by her conduct in three of his subsequent cases. Specifically, Mr. Bolon claims that since the 2014 case, Judge Thomakos has imposed maximum sentences on him and that after she sentenced him in one of those matters, she wished him a “happy birthday” with a smirk on her face.

{¶ 3} Judge Thomakos has responded in writing to the affidavit and affirms that she will fairly and impartially preside over the underlying case. According to the judge, she recused herself from the 2014 case because one of the victims was the mother of a child in school with the judge’s children. The judge acknowledges

that she has since presided over three of Mr. Bolon’s cases, but she has no recollection of any birthday salutation to him.

{¶ 4} “[A] judge’s voluntary removal from an earlier case does not, by itself, support disqualification from an unrelated case involving that same party or attorney.” *In re Disqualification of Celebrezze*, 135 Ohio St.3d 1218, 2012-Ohio-6304, 985 N.E.2d 499, ¶ 7. Here, Judge Thomakos has sufficiently explained the circumstances that led her to recuse herself from the 2014 case and why those circumstances are not present in the underlying matter. Nothing about the judge’s actions suggest that she cannot fairly and impartially preside over this case. *See In re Disqualification of VonAllman*, 149 Ohio St.3d 1230, 2016-Ohio-8589, 74 N.E.3d 457, ¶ 5.

{¶ 5} In addition, “[t]he statutory right to seek disqualification of a judge is an extraordinary remedy. A judge is presumed to follow the law and not to be biased, and the appearance of bias or prejudice must be compelling to overcome these presumptions.” (Citation omitted.) *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. That Judge Thomakos has since sentenced Mr. Bolon to the maximum term permitted by law and that she wished him a happy birthday are insufficient to overcome the presumption that she is fair and impartial. *See In re Disqualification Brown*, 139 Ohio St.3d 1224, 2014-Ohio-2154, 11 N.E.3d 275, ¶ 13 (“Absent evidence of bias or prejudice, an affidavit of disqualification cannot be used to remove a judge from resentencing a defendant solely because the judge previously imposed the maximum sentence permitted by law”).

{¶ 6} The affidavit of disqualification is denied. The case may proceed before Judge Thomakos.